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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,314	02/19/2004	Stuart W. DeJonge	SWD-130A	2142

7590

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EXAMINER

BRINSON, PATRICK F

ART UNIT

PAPER NUMBER

3754

DATE MAILED: 02/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/784,314	<b>Applicant(s)</b> DEJONGE, STUART W.	
	<b>Examiner</b> Patrick F. Brinson	<b>Art Unit</b> 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Information Disclosure Statement*

1. The information disclosure statement (IDS) submitted on February 19, 2004 has been considered by the examiner and the initialed copy has been placed in the file.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 7, 9, 10, 11-14, 17, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 4,771,919 to **Ernst** in view of U.S. 4,261,487 to **Seager**.

The patent to **Ernst** discloses a multiple chamber dispenser with a dual position cap, comprising a dispenser container having a circular top, a bottom, and an outer wall structure with a plurality of chambers (14, 16) within the outer wall structure, with the dispenser container circular top having a threading and a lower stop located on an outside surface of the circular top, and the plurality of chambers being side-by-side and being separated by a least one divider wall (15) that extends to the circular top of the dispense container. A cap (10) connected to the dispensing

container and having dispensing orifices (26, 28). The cap having side wall structure with threading on its inside that corresponds to the circular top threading, and having a first position, being a lower position on the dispenser container and also being a closed position, and having a second position, being a position higher on the dispenser container and also being an open position for dispensing. When the cap is in the first position, the orifices (26, 28) are closed so as to prevent content flow therethrough, and the plurality of chambers are isolated and sealed from one another and sealed from dispensing. When the cap is in the second position the dispensing orifices are open to permit content flow therethrough and the plurality of chambers are not sealed from one another and are not sealed from dispensing. The cap is rotated from the first position to second position, so that when the dispenser is inverted, content from each of the plurality of chambers may simultaneously be dispensed therefrom and through the dispensing orifices, as recited in claims 1 and 11. When the cap is in the second position the cap rest against the lower stop, which is a top surface (21, 23) of at least one of the circular top and the plurality of chambers, as recited in claims 2, 3, 12 and 13. The plurality of chambers (14, 16) are integrally formed with and are a permanent part of the dispenser container, as recited in claims 4 and 14. The patent to Ernst discloses axial movement of the cap is prevented by the inclusion of a stop or retaining plate on the dispensing tool used to force components out of the chambers. Ernst, however, does not disclose the upper stop

located on the external wall of the container. The patent to **Seager** discloses a pour through stopper including a container with an external threaded neck and a cap with corresponding internal threads. The cap including a lower stop (19) and an upper stop (34) for limiting the opening movement of the cap relative to the container. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide to the container of **Ernst** an upper stop as suggested by **Seager** in order to alternatively provide a stop member and to integrally form the stop with the container.

3. Claims 5, 6, 8, 15, 16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Ernst** in view of **Seager** as applied to claim 1 above, and further in view of U.S. 4,838,457 to **Swahl et al.**

The patent to **Ernst**, as modified, does not disclose the plurality of chambers as being cartridges that are inserted into and removable from the container., nor is the container disclosed as being circular and squeezable. The patent to **Swahl et al.** discloses a dispenser for dual viscous products wherein the plurality of chambers includes removable cartridges (22, 23). It is disclosed, col. 4, that the viscous products from each of the pouches separate until they pass from the nozzle on the head assembly to the exterior when the compressible portion of the circular-shaped container is squeezed. It would have been obvious to one having ordinary skill in the

art at the time the invention was made to provide to the container of **Ernst**, as modified, removable pouches or cartridges containing fluid, as suggested by **Swahl et al** in order to pre-package the fluid substances that are to be poured from the container. It also would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container of **Ernst**, as modified, to have a circular shape and to include at least a portion that allows for release of fluid by squeezing wherein the fluid within the container may have a viscosity that would not exit the container by simple inversion of the container.


### *Conclusion*

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Luker, Felten et al., Cherba and Armour are pertinent to Applicant's invention in disclosing nozzle caps that are threaded and include a stop ledge. The patents to Gross et al., De Laforcade, Maines, and Fillmore et al. is pertinent in disclosing a dispensing container having dual removable cartridges.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Patrick F. Brinson** whose telephone number is (571) 272-4897. The examiner can normally be reached on M-F 7:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Michael Y. Mar** can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Patrick F. Brinson  
Primary Examiner  
Art Unit 3754

P. F. Brinson  
February 1, 2006